

The Honorable Benjamin Settle

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CLYDE RAY SPENCER, MATTHEW
RAY SPENCER, and KATHRYN E.
TETZ,

Plaintiffs,

vs.

FORMER DEPUTY PROSECUTING
ATTORNEY FOR CLARK COUNTY
JAMES M. PETERS, DETECTIVE
SHARON KRAUSE, SERGEANT
MICHAEL DAVIDSON, CLARK
COUNTY PROSECUTOR'S OFFICE,
CLARK COUNTY SHERIFF'S OFFICE,
THE COUNTY OF CLARK, SHIRLEY
SPENCER and JOHN DOES ONE
THROUGH TEN,

Defendants.

No. C11-5424BHS

DEFENDANT SHIRLEY SPENCER'S
ANSWER TO PLAINTIFFS'
COMPLAINT

DEFENDANT SPENCER'S ANSWER TO
COMPLAINT [C11-5424BHS] - 1
lw/GAW1218.466/851993

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1 COMES NOW defendant Shirley Spencer, by her attorneys of record, Gary
2 A. Western and William H. Dunn, and in answer to the plaintiffs' complaint states
3 as follows:

4 Plaintiffs' complaint violates F.R.C.P. 8(a)(2), which requires that a claim
5 for relief filed in court contain a "short and plain statement of the claim showing
6 that the pleader is entitled to relief." Plaintiffs' complaint is argumentative,
7 includes legal conclusions, and has a narrative of events dating back more than 60
8 years, many of which are irrelevant to this claim. Defendant objects to the
9 language of the complaint and all allegations are denied unless specifically
10 admitted herein.
11

12 **PARAGRAPHS ADMITTED IN PART AND DENIED IN PART**

13 Answering Paragraph 1, defendant admits that plaintiffs' complaint alleges
14 claims under 42 U.S.C. § 1983 and state law, but denies the remaining allegations.
15

16 Answering Paragraph 3, admit this court has jurisdiction over plaintiffs'
17 federal causes of action but denies the remaining allegations.

18 Answering Paragraph 5, to the extent that the allegations contained in this
19 paragraph contain legal conclusions, they are denied. Admit that plaintiff was
20 allowed to withdraw his plea of guilty following the conclusion of a personal
21 restraint petition filed in the appellate courts of the State of Washington. Deny
22 the remaining allegations as they are legal conclusions.
23

1 Answering Paragraph 11, admit that the Clark County Prosecutor's Office is
2 an agency of Clark County but deny the remaining allegations.

3 Answering Paragraph 14, admit that the Clark County Prosecutor's Office is
4 an agency of Clark County, but deny the remaining allegations.

5 Answering Paragraph 36, admit the first two sentences and deny the
6 allegations of the third sentence.

7 Answering Paragraph 37, admit they resided in Washington. All other
8 allegations are denied.

9 Answering Paragraph 40, admit Ms. Spencer told plaintiff in a phone call
10 about what Kathryn had reported. Plaintiff said "oh is that all, I'll take care of it
11 when I get home." Ms. Spencer had called the Clark County Sheriff to report
12 Kathryn's statements. Admit Kathryn said she had been touched by more than
13 one person. Deny all other allegations.

14 Answering Paragraph 41, it was Ms. Spencer who first reported Kathryn's
15 statements to the Clark County Sheriff's office. Ms. Spencer denies the remaining
16 allegations due to a lack of information.

17 Answering Paragraph 62, admit that after plaintiff pled guilty, Ms. Spencer
18 and Mr. Davidson began a relationship. All other allegations are denied.

19 Answering Paragraph 64, admit they did not have a relationship until after
20 plaintiff pled guilty. All other allegations are denied.

1 Answering Paragraph 67, admit that at some point Ms. Spencer sold her
2 house, which she owned before meeting the plaintiff, for \$5,000. Admit she
3 moved into a different house. Deny all other allegations.

4 Answering Paragraph 169, admit that after plaintiff pled guilty, Ms. Spencer
5 began a relationship with Mr. Davidson. All other allegations are denied.

6 Answering Paragraph 213, admit plaintiff's Petition was denied. All other
7 allegations are denied.

8 Answering Paragraph 226, admit that Ms. Spencer and Mr. Davidson began
9 a relationship after plaintiff pled guilty. All other allegations are denied.

11 **PARAGRAPH ADMITTED IN PART AND DENIED ON**
12 **INFORMATION AND BELIEF IN PART**

13 Answering Paragraph 86, admit that plaintiff was hospitalized at
14 Oregon Health Science Center. As to the other allegations of this paragraph, this
15 defendant lacks information sufficient to form a belief as to the truth thereof, and
16 therefore denies the same.

17 Answering Paragraph 108, admit the first sentence, admit she said Matt
18 reported plaintiff abused him with oral sex and anal penetration. Defendant lacks
19 information as to the other allegation.

20 **PARAGRAPHS ADMITTED**

21 Paragraphs 2, 4, 6, 7, 8, 9, 10, 12, 13, 15, 35, 39, 104, 105, 107, 167 and
22 168 are admitted.
23

PARAGRAPHS DENIED

Paragraphs 16, 38, 66, 106, 129, 130, 160, 209, 210, 211, 212, 257, 258, 262, 263 and 286-394 are denied.

PARAGRAPHS DENIED ON INFORMATION AND BELIEF

Answering Paragraphs 17-34, 42-61, 63, 65, 68-85, 87-102, 109-128, 131-159, 161-166, 170-208, 214-225, 227-256, 259-261, 264-285, this defendant lacks information sufficient to form a belief as to the truth thereof, and therefore denies the same.

AFFIRMATIVE DEFENSES

1. The plaintiffs' claims are barred by the doctrines of res judicata, collateral estoppel and judicial estoppel.

2. Some or all of the plaintiffs' claims are barred by the statute of limitations.

3. Some or all of the plaintiffs' claims are barred by the doctrine of laches.

4. The plaintiffs caused or contributed to their own damages, if any.

5. Plaintiffs' injuries and damages, if any, may have been caused by the intentional conduct of another party and those damages must be segregated from the damages caused by fault.

1 6. The injuries and damages, if any, claimed by the plaintiff Clyde Ray
2 Spencer, arise out of a condition to which he had knowledge and voluntarily
3 subjected himself.

4 7. The investigation, arrest and prosecution of Clyde Ray Spencer were
5 undertaken with probable cause and were lawful.

6 8. The plaintiffs' damages, if any, were caused by the plaintiffs' failure
7 to mitigate said damages.

8 9. Plaintiffs were comparatively negligent, and, consequently, plaintiffs'
9 damages should be reduced in proportion to their own comparative fault.

10 10. The conduct of this defendant was privileged.

11 11. The plaintiffs' damages, if any, were caused by the acts or omission of
12 third parties over whom this defendant had no control.

13 12. This defendant is entitled to immunity for all actions related to the
14 prosecution of Mr. Spencer.

15 13. Ms. Spencer is immune from liability for her reports to the
16 appropriate governmental bodies. RCW 4.24.500.

17 14. Plaintiffs' complaint fails to state a claim upon which relief can be
18 granted.

19 15. The Section 1983 claim as to this defendant is frivolous and entitles
20 this defendant to her attorney fees and expenses.

1 WHEREFORE, defendant prays for judgment:

- 2 1. Dismissing plaintiffs' complaint with prejudice and with costs;
- 3 2. Apportioning any damages according to the proportionate fault of all
- 4 persons or entities;
- 5 3. For all of defendant's attorney fees and costs incurred herein; and
- 6 4. For such further relief as the court deems just and equitable.
- 7

8 DATED this 15th day of December, 2011.

9 By s/ Gary A. Western

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17 Of Attorneys for Defendant Shirley Spencer

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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SIGNED this 15th day of December, 2011, at Seattle, Washington.



Lin Walker